

Background

In calendar year 2006, WCRX-LP, 102.1 FM borrowed funds from a creative lender who financed the purchase of the station's transmitter and antenna.

WCRX-LP, 102.1 FM is indebted to its lender.

WCRX-LP, 102.1 FM was licensed as an LPFM on March 21, 2007.

WCRX-LP, 102.1 FM broadcasts to a small municipality located in one of the top fifty American radio markets.

In its first year of broadcast, WCRX-LP, 102.1 FM has received programming support from five community newspapers; six community organizations and two public schools.

It has provided community calendar announcements for more than five hundred community events.

Four high school students have received course credit for their volunteer work for the station.

One high school student is producing programming for his senior school project. To date, the programming includes an interview with a member of city council and an interview with the new mayor commenting on his first one hundred days in office. WCRX-LP, 102.1 FM also broadcast an interview with two of the city snow plow drivers who kept the city street open during a late March blizzard.

WCRX-LP, 102.1 FM has contracted with seven volunteer on-air personalities to provide regular feature programs. These programs include regular reports on local gardening conditions, the interest rates offered on certificates of deposits by nine local banks, lunch specials at four restaurants in the community, a local consumer price index (CPI), local charity and consignment auctions and speakers and music recitals at local religious institutions, seminaries and universities.

In October, candidates for mayor debated at the local public library. The forum was recorded by WCRX-LP, 102.1 FM and rebroadcast three times prior to the election.

Secondary service: The fragile license for LPFMs

The LPFM license is the most fragile license issued by the FCC.

Since receiving its construction permit, WCRX-LP, 102.1 FM has been notified about three potential encroachments created by proposals of commercial stations. All three of the proposals are made by stations that are previously authorized in small communities. All three of the commercial stations wanted to relocate their transmission facilities to the larger metropolitan market where WCRX-LP, 102.1 is located.

All three of these previously-authorized commercial stations have assumed that WCRX-LP, 102.1 FM is of secondary importance, and is a secondary radio service under FCC rules.

The commercial radio industry and the public broadcast industry create the impression that an LPFM license is just a morsel that is served up to their commercial appetites.

Previously-authorized commercial stations assert that they are free to relocate their transmission facilities without regard to the impact on the existing operations of LPFM stations.

For support of this position, the previously-authorized commercial stations and public stations always point to FCC Rule 73.809 that, with a moments reflection, plainly applies only to a new commercial station that is subsequently authorized on a co-channel, first or second adjacent channel.

The actual plain text of the rule, so apparently onerous on LPFMs, applies only to subsequently-authorized commercial and public stations. The rule does not offer any advantages to stations previously-authorized on co-channels and first and second adjacent channels.

§ 73.809 Interference protection to full service FM stations. It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is

predicted to occur and actually occurs within the 3.16 mV/m (70 dBu) contour of such stations. Predicted interference within this contour shall be calculated in accordance with the ratios set forth in Section 73.215(a)(1) and (2) of this Part. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

An LPFM station will be provided an opportunity to demonstrate in connection with the procession of the commercial or NCE FM application that interference with the 3.16 mV/m contour of such station is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

Complaints of actual interference by an LPFM station subject to subsection (b) within the 3.16 mV/m contour of a commercial or NCE FM station must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will

eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility.

It shall be the responsibility of the licensee of an LPFM station to correct any condition of interference that results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, D.C., after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

The plain text of this rule applies to subsequently-authorized commercial stations, not to stations previously-authorized on a co-channel or first or second adjacent channels.

But even in this situation, any proposed new commercial station must show that it will serve the community better than the existing LPFM.

The rule clearly does *not* apply to previously-authorized stations that seek to relocate their transmission facilities and interfere with an existing LPFM.

Even the discussion of this in the Third Report and Order and Second Further Notice of Proposed Rulemaking clearly limits the effect to commercial and public stations previously authorized on co-channels, first and second adjacent stations.

The point is made at 07-204 p.5:

In resolving those issues, we seek to increase the number of LPFM stations that are on the air and providing service to the public, and to promote the continued operation of LPFM stations already broadcasting, while avoiding interference to existing FM service.

In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99-25. Third Report and Order and Second Further Notice of Proposed Rulemaking. Adopted: November 27, 2007. Released December 11, 2007. Page 5.

Previously-authorized commercial and public stations should live with the operational choices they have made. They should continue serving their original communities of license when their relocations will harm existing LPFM stations.

Status as a secondary service: impact on operations of LPFMs.

Integrity is a core value of the radio broadcasting profession. The public expects that the information it receives from radio broadcast will be reliable.

For LPFMs, its secondary status creates special integrity problems.

When an LPFM needs financing to make equipment purchases, it must disclose how fragile its license is. Only a rare lender will offer a loan to a licensed LPFM when the lender understands that the viability of the LPFM borrower is completely exposed to business decisions of commercial

competitors. The disclosures must be made and shopping for financing becomes a difficult task for any LPFM station.

Another example of the integrity issue is obvious in fund-raising appeals. For example, most LPFM stations are listener-supported. How should an LPFM station explain the fragility of its license when fund-raising appeals are made? Is it necessary to disclose to listeners that commercial stations can bump an LPFM out of a community when any commercial station decides to relocate its transmission facilities?

This integrity issue is the reason why WCRX-LP, 102.1 FM does not offer annual memberships to its audiences. WCRX-LP, 102.1 FM recognizes that its license is fragile and cannot in good faith solicit memberships for any specific period of time.

The fragility of the LPFM license creates other fundamental operating problems for LPFMs. When contracting with producers and on-air personalities, it is always necessary to go into long disclosures of why the station might have to close down its LPFM operations when a commercial station wants to invade the LPFM territory.

Summary.

Commercial and public stations which have been previously-authorized on co-, first and second adjacent channels do not benefit from secondary service status of LPFMs. This point should be repeated in any rule-making.

Localism can be protected when operating LPFMs are protected. Previously-authorized commercial and public stations seeking to move to a more attractive commercial market should not do so at the expense of an operating LPFM.

A stable license is necessary for most lenders to finance LPFM purchases.

Respectfully submitted,

(signed)

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